

RESOLUTION NO. 67,172 - N.S.

ESTABLISHING A PROCESS AND STANDARDS FOR EVALUATING "SIGNIFICANT COMMUNITY BENEFIT" PACKAGES FOR BUILDINGS OVER 75 FEET IN THE DOWNTOWN

WHEREAS, Berkeley Municipal Code Section 23E.68.090.E provides:

E. In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City. These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements of this Chapter shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest;

and

WHEREAS, the Zoning Adjustments Board has requested the Council to provide direction as to how it should evaluate significant community benefit proposals under Section 23E.68.090.E; and

WHEREAS, the City Council understands the Zoning Adjustments Board's request as a request for guidance as to how the Council believes Section 23E.68.090.E should be implemented; and

WHEREAS, the Council has considered this request and has agreed to provide guidance to the Zoning Adjustments Board in the form of this Resolution, which is intended solely to express how the Council would be inclined to address the issue of community benefits should a project subject to Berkeley Municipal Code Section 23E.68.090.E come before it.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

The following description of how the City Council would be inclined to evaluate the finding required by Section 23E.68.090.E should a project subject to that section come before it, and requests that the Zoning Adjustments Board takes this into consideration when it evaluates such projects.

A. General Principles

1. Entitlements for developments of buildings over 75' in the Downtown result in added value to the project developer and such additional value should be shared with the community.
2. "Significant community benefits" shall be defined as follows:

A significant community benefit is defined as a contribution to the broader community, either physically constructed or a monetary contribution to the City, made by projects above 75 feet in the C-DMU district in order to satisfy the significant community benefits policy in BMC 23E.68.090E. The value of the community benefit will be determined based on a portion of the increased value. The portion attributable to community benefits must not result in project infeasibility.
3. Project developers should address the detriment created by the project on non-profits which serve the Berkeley community.

B. Application

The initial permit application for a building over 75' in the Downtown must include a proposed package of significant community benefits, with a total value based on the policy set forth below. The University of California has voluntarily agreed to comply with the policies of the Downtown Area Plan. Therefore the University should comply with this significant community benefits policy.

The application shall include a *pro forma* showing pre-development, soft, and hard cost estimates, as well as the projected rate of return the applicant expects the project to generate, based on revenues (sales price or rental income stream) anticipated once the project is completed. This analysis shall cover two scenarios: (1) a base case building of 75' or less; and (2) a high-rise building over 75'. This analysis shall reflect trends in rental income in determining the dollar range of benefits the City could reasonably request. The total value of benefits must bear a reasonable relationship to the value generated by the project.

In addition the applicant shall attempt to provide an estimate of the costs of the proposed benefits or fee package in order for the City to evaluate independently whether the benefits package is adequate in proportion to the value of the additional height (as the Downtown Area Plan requires), and whether the project can achieve a reasonable rate of return while providing the significant community benefits proposed.

The financial information will be reviewed by an independent consultant selected by the City and paid for by the applicant. If necessary, the consultant may require additional information from the applicant in order to clarify assumptions included in the original

cost/benefit assessment. The findings of the independent economic analysis will be presented to the Zoning Adjustments Board.

C. Significant Community Benefit Options

1. Except as set forth in paragraph 2, an applicant for a building over 75' shall propose a significant community benefits package that satisfies the criteria of either Option A or Option B, below.
2. Projects Already in the Permitting Process. For projects that have been in the zoning review permit process for more than two years prior to June 25, 2015, significant community benefits shall consist of the following:
 - a. Payment of \$100 per square foot for all rentable residential square footage between 75'–120'; and
 - b. Payment of \$150 per square foot for all rentable residential square footage between 121-180'.

Alternatively, such projects may propose benefits of an equivalent value, subject to evaluation by the Zoning Adjustments Board as set forth below.

3. Option A: Affordable Housing, Labor, and Other Benefits. Significant community benefits under Option A shall include: (a) an additional affordable housing benefit that exceeds the existing requirements for all projects in the City; (b) a Project Labor Agreement (PLA); and (c) at least 1 other category of significant community benefits depending on the total value of the public benefits that the City determines the project can reasonably bear. In order to incentivize the immediate production of community benefits, developers may provide 90% of that predetermined total value (minus the labor credit) if they complete the community benefits prior to/concurrent with a certificate of occupancy.
4. Option B: Square Footage Flat Fee. Significant community benefits under Option B shall include: (a) a PLA; and (b) a per square foot fee determined by an independent financial consultant that would capture the highest reasonable value while maintaining financial feasibility of the project. Such fees would be paid into a City fund that is restricted to providing the community benefits specified in this Resolution.
5. Under both Options A and B, a PLA shall entitle the applicant to a credit of 5% of the construction cost of the project against the total fee. After the Project Labor Agreement credit is applied, 60% of the remaining amount should be allocated to affordable housing units by making a payment to the City's Housing Trust Fund or by providing the equivalent units on site for tenants with qualifying incomes. The remaining 40% should be allocated to fulfilling the other benefit categories described herein.
6. The community benefit categories are as follows.

Base Benefits

- a. Affordable Housing. Either (1) additional on-site affordable housing that exceeds standard requirements; or (2) affordable housing fees that exceed standard City requirements.
- b. Labor Requirements. In addition to agreeing to enter into a Project Labor Agreement, applicants would be required to sign an agreement stating that no less than 20% of the project's construction workers be Berkeley or Green Corridor/Alameda County residents, with priority in that order.

Additional Community Benefit

- a. Arts and Culture. On-site or off-site benefits for arts and culture, including publicly accessible art or performance space or an in-lieu fee to the Public Art Fund.
- b. Street and Open Space Requirements (SOSIP). Additional funding for SOSIP beyond what is currently required by law, or construction of SOSIP or similar/updated projects approved by the City, which can include, but are not limited to:
 - Improving bicycle networks
 - Permeable street paving
 - Tree plantings
 - Pedestrian amenities
 - Transportation mitigations
- c. Sustainable Development. Environmentally friendly community benefits beyond what is currently required, such as, but not limited to:
 - Higher green building standards
 - Water and wastewater infrastructure repair and reinvestment
 - On-site gray water infrastructure
 - Waste diversion
 - Rainwater re-use
 - GreenTRIP certification¹
- d. Restoration of Historic Civic Center Buildings. Contributions to the restoration of Old City Hall and/or the Veterans Memorial Hall. Such contributions could be used for other listed community benefits in the event the City determines that restoration of one or both of these buildings is not likely within the foreseeable future.

¹ <http://www.transformca.org/landing-page/greentrip-certification-program>

- e. Supportive Social Services. Contributions to supportive social services which may include, but are not limited to:
- Funding for the Housing Crisis Resolution Center (HCRC) or the Downtown Drop-In Center
 - Public restrooms
 - Funding for non-profit organizations serving Berkeley's youth

7. Alternate Community Benefits Proposals. In the event an applicant believes that compliance with the foregoing community benefits standards would violate any state or federal law or constitutional provision, an applicant may make an alternative proposal.

D. Evaluation Process

The Zoning Adjustments Board will review the community benefits package proposed by the applicant to determine whether to accept the benefits package, reject it, or propose modifications. Once the Zoning Adjustments Board approves the community benefits package, the Board can make the finding required by Section 23E.68.090.E.

E. Community Benefits Agreement

All significant community benefits agreed to by the applicant and approved by the City shall be included as Conditions of Approval, and shall be reflected in a community benefits agreement and if necessary a notice of limitation, that shall must be fully executed and recorded against the property on which the project is located prior to issuance of a building permit, provided that any payments required by the community benefits agreement would not be due prior to issuance of a building permit, but would be prior to the issuance of a Certificate of Occupancy.

The foregoing Resolution was adopted by the Berkeley City Council on July 14, 2015 by the following vote:

Ayes: Arreguin, Capitelli, Droste, Maio, Moore, Wengraf, and Bates.

Noes: Anderson and Worthington.

Absent: None.



Tom Bates, Mayor

Attest: 

Rose Thomsen, Deputy City Clerk